IN THE CIRCUIT/COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA

v. Case No.: 2019-MM-002368A

JEFFREY W. BABIN,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002357A

JOSEPH M. DANIELS,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002349A

JOHN DEORA,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002419A

GUY KEVIN EAGAN,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002412A

CRAIG FIRING,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002401A

TIMOTHY R. GOERING,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002352A

JOHN PAUL HAVENS,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002346A

ROBERT KRAFT,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002348A

ROBERT KRAFT,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002400A

MINGFU LU,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002416A

JUSTO M. NARANJO,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002356A

JAMES G. PORTER,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002347A

MARTIN SEGAL,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002405A

JOHN OLIVER VOIROL,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002354A

JONATHAN SCOTT WEISS,

Defendant.
_____/

STATE OF FLORIDA

v. Case No.: 2019-MM-002403A

DANIEL RUSSEL YOUNG,

Defendant.
_____/

MEDIA MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF OPPOSING JOINT MOTION FOR A PROTECTIVE ORDER

ABC, Inc; The Associated Press; ESPN, Inc.; Gannett Co., Inc.;[1] GateHouse Media, LLC;[2] The McClatchy Company;[3] The New York Times Company; Orlando Sentinel Communications Company, LLC; Sun-Sentinel Company, LLC; and TEGNA,[4] ("Media Intervenors") hereby move to intervene in these actions for the limited purpose of opposing the Defendants' Joint Motion for a Protective Order, filed on March 21, 2019. As detailed below, Defendants have provided no valid justification for preventing access to records made public by

[1] Publisher of *Florida Today* (Brevard County), the *Indian River Press Journal* (Treasure Coast Newspapers, Vero Beach), the *Naples Daily News*, *The News-Press* (Fort Myers), *PNJ.com* (Pensacola), *The Stuart News* (Treasure Coast Newspapers), the *St. Lucie News-Tribune* (Treasure Coast Newspapers, Fort Pierce), the *Tallahassee Democrat*, and USA TODAY.

[2] Publisher of *The Daytona Beach News Journal*, *The Gainesville Sun*, *The (Lakeland) Ledger*, the *Ocala StarBanner*, the *Palm Beach Post*, and the (Sarasota) *Herald-Tribune*.

[3] Publisher of the *Miami Herald* and the *Bradenton Herald*.

[4] Owner of WTSP-TV and WTLV/WJXX.

Article I, Section 24, of the Florida Constitution and Chapter 119, Florida Statutes, the Public Records Act.

Background

1. The Media Intervenors are local, state, and national news media organizations that have covered—and continue to cover and report on—criminal investigations into human sex trafficking and prostitution rings at spas within Palm Beach County, Florida. Human sex trafficking has become known as a major human rights tragedy, often involving extensive criminal enterprises. The problem within Florida has been recognized at all levels of government and in 2014 led to the legislative creation of the Statewide Council on Human Trafficking, a body whose mission is to coordinate statewide efforts to eradicate trafficking and provide victim support.[5] In their role as surrogates for keeping the public informed about this matter, the Media Intervenors attend court proceedings and rely on state, county, and local public records, as well as judicial records, to gather information for this critical news story.

2. Local law enforcement authorities recently concluded an investigation into a local spa/massage parlor, the Orchids of Asia Day Spa, in Jupiter, Florida, and its potential connection to human trafficking and prostitution rings.

3. As set forth in Defendants' Motion, the State of Florida has filed misdemeanor charges against the above-named defendants for solicitation of prostitution. See Motion at ¶ 1.

4. As part of the investigation, law enforcement installed surveillance cameras inside the spa. Id. at ¶ 3. In addition to the surveillance video, the State undoubtedly possesses other records arising from the investigation, including search warrant applications, supporting

[5] The Council's 2018 Annual Report can be found on the Florida Attorney General's website at: http://myfloridalegal.com/pages.nsf/Main/0108F1C73781B7F485257AC20074F49E.

affidavits, and warrant returns (the warrant-related records are presumably also currently contained in sealed court files). Law enforcement also possesses investigative reports, records seized from the spas, and other evidence.

5. The Motion seeks an overarching ban on the dissemination of *any* evidence related to the Defendants' cases, requesting that this Court preclude any party from "copying or permitting, facilitating, making, or granting any public access to the evidence gathered during the investigation at issue, including any video-evidence related thereto." Id. at 1-2.

6. The Defendants seek this relief on the grounds that the information sought to be restricted constitutes either exempt active criminal intelligence or investigative information, which has not yet been disclosed to them in the criminal discovery process. Id. at ¶¶ 4-7. However, as discussed below, active criminal investigative/intelligence information is designated as exempt only and, as such, may be released by an agency at its discretion. In any event, the information cannot be withheld from the public once it is provided or required to be provided to the Defendants in discovery.

7. Because the Motion at issue directly affects the news media's and the public's right to monitor these proceedings, the Media Intervenors have standing to intervene as surrogates for the public's rights of access. See, e.g., Miami Herald Publ'g Co. v. Lewis, 426 So. 2d 1, 4 (Fla. 1982); see also Sarasota Herald-Tribune Co., Inc. v. Talley, 523 So. 2d 1163 (Fla. 2d DCA 1988); Times Publ'g Co. v. Penick, 433 So. 2d 1281 (Fla. 2d DCA 1983); News-Press Publ'g Co., Inc. v. State, 345 So. 2d 865 (Fla. 2d DCA 1977); Miami Herald Publ'g Co. v. McIntosh, 340 So. 2d 904, 908 (Fla. 1976) ("It has been recognized in Florida and elsewhere that the news media, even though not a party to litigation below, has standing to question the validity of an

order [restricting access to information] because its ability to gather news is directly impaired or curtailed.").

8. The Media Intervenors accordingly request to intervene and be heard in this matter to oppose the Motion, and any further requests by the Defendants to seal or otherwise close public or judicial records.

Discussion

In addition to the rights found in the state's public records law (Chapter 119, Florida Statutes), the citizens of Florida enjoy a state constitutional right of access to government records, including those of the judiciary and the executive branch. See Art. I, § 24, Fla. Const. Hence, any measure that delays or obstructs citizens from exercising that right must be considered with exacting scrutiny. Consistent with these bedrock principles, Florida courts have long recognized that government records are *presumptively open* and that the Public Records Act is to be construed liberally in favor of access. See, e.g., Dade Aviation Consultants v. Knight Ridder, Inc., 800 So. 2d 302, 304 (Fla. 3d DCA 2001); Tribune Co. v. Public Records, 493 So. 2d 480, 483 (Fla. 2d DCA 1986).

Importantly, public perception or policy considerations also cannot create an exemption to shield public records from disclosure. See, e.g., Wait v. Fla. Power & Light Co., 372 So. 2d 420, 425 (Fla. 1979) (public records law "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure); Bd. of Cty. Comm'rs of Palm Beach Cty. v. D.B., 784 So. 2d 585, 591 (Fla. 4th DCA 2001) ("Courts cannot judicially create exceptions, or exclusions to Florida's Public Records Act").

Moreover, the Public Records Act plainly requires that any non-exempt portions of records must be released and any exempt portions redacted. See § 119.07(1)(d), Fla. Stat. (2018)

("A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying"); Ocala Star Banner Corp. v. McGhee, 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994) (confidential informant information in police report can be redacted and remainder of report disclosed).

Under these well-established principles, Defendants have not—and indeed cannot—justify a blanket protective order preventing access to overbroad categories of public records.

A. The active criminal investigative exemption does not prevent disclosure.

Section 119.071(2)(c)1, Florida Statutes, provides an exemption for "active" criminal investigative and/or intelligence information. See State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, et al., 251 So. 3d 205, 211 (Fla. 4th DCA 2018). The exemption has always had a limited purpose "to prevent premature disclosure of information during an ongoing investigation" and "which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution." Id. at 211-12 (citation omitted). The purpose of this exemption is to "exclude from the public eye legitimate law enforcement secrets." Downs v. Austin, 522 So. 2d 931, 934 (Fla. 1st DCA 1988). Here, the suspects have been identified and arrested.

Significantly, active criminal investigative information is *exempt only* by definition—and not *confidential and exempt* as claimed by Defendants in the Motion. See § 119.071(2)(c), Fla. Stat.; Motion at ¶¶ 6-7. As such, an agency may waive the exemption at any time and disclose information at its discretion. See State v. Wooten, 260 So. 3d 1060, 1069-70 (Fla. 4th DCA 2018) (citations omitted).

Moreover, Defendants' citation to § 119.011(3)(c)(5), Florida Statutes, is misplaced. That section mandates, with exceptions not applicable here, that once information is provided (or required to be provided) in discovery to a criminal defendant, the information no longer is exempt as active criminal investigative information. See § 119.011(3)(c)(5); Satz v. Blankenship, 407 So. 2d 396, 398 (Fla. 4th DCA 1981) (materials given or required to be given to the defendant are "open for public inspection"); Bludworth v. Palm Beach Newspapers, 476 So. 2d 775, 779 (Fla. 4th DCA 1985) (once documents are released to the defendant in discovery, the criminal investigation/intelligence exemptions no longer applies and they become subject for public release); Staton v. McMillan, 597 So. 2d 940, 941 (Fla. 1st DCA 1992).[6] The Defendants acknowledge this very point in their motion, noting that materials lose the exemption once turned over to the defense. See Motion at ¶ 6. Accordingly, the Defendants know they cannot request an indefinite, blanket public access restriction on any and all evidence.

Additionally, Florida law provides that the exemption is waived if the information—as in this case—already has been disclosed to the public. McMillan, 597 So. 2d at 941; Downs, 522 So. 2d at 935. In Downs, the court, noting that the state attorney had already made the result of a polygraph of an informant public knowledge on two different occasions, held the exemption no longer covered the polygraph test. 522 So. 2d at 935. The court reasoned, "once the State has gone public with information which could have previously been protected from disclosure under

[6] Other limited exemptions can apply to select records or portions of records otherwise subject to disclosure because they have been disclosed to a criminal defendant. For example, the public records law contains an exemption relating to the disclosure of statements that meet the strict legal definition of a confession. See § 119.071(2)(e), Fla. Stat. But such information must be redacted and the remainder of the discovery information produced. See § 119.07(1)(d), Fla. Stat. (2019). Additionally, the Motion does not raise any fair trial arguments in support of non-disclosure. Even if it did, those arguments could not satisfy the rigorous three-part test referenced in Fla. Freedom Newspapers v. McCrary, 520 So. 2d 32 (Fla. 1988), and established in Lewis, 426 So. 2d at 1.

the Act's exemptions, no further purpose is served by preventing full access to the desired documents or information." Id.; see also Bludworth, 476 So. 2d at 777 (ordering release of autopsy report after contents disclosed at news conference); Satz, 407 So. 2d at 398 (information made public loses "legitimacy of law enforcement secrecy").

Here, much of the information Defendants seek to protect has already been disclosed to the public. In February 2019, the Palm Beach County State Attorney's Office ("SAO") released the arrest report and probable cause affidavits for each defendant named above, each of which details the sexually explicit acts that defendant was caught engaging in. Moreover, the SAO released the arrest report and probable cause affidavit for the owner of the spa, which lays out in detail all the footage and sexually explicit acts caught on the surveillance tapes. Accordingly, to the extent that any evidence, including surveillance videos, contains information already released to the public, the exemption has been waived.

B. Privacy concerns do not prevent disclosure.

Though not argued in the Motion, to the extent the Defendants seek to prevent the disclosure of public records because they are concerned about their purported privacy interests, such considerations do not operate to overcome the public records law. See Art. I, § 23, Fla. Const. (specifically stating that Florida's constitutional right to privacy "shall not be construed to limit the public's right of access to public records and meetings as provided by law"). The Florida Constitution "does not provide a right of privacy in public records." Michel v. Douglas, 464 So. 2d 545, 546 (Fla. 1985); see also Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc., 379 So. 2d 633, 636-39 (Fla. 1980) (no federal or state disclosure right of privacy prevents a member of the public from seeing public records). Florida courts also reject the notion that simply alleging embarrassment alone is sufficient grounds to defeat Public Records Act

disclosure mandates. See S. Bell Tel. & Tel. Co. v. Beard, 597 So. 2d 873, 877 (Fla. 1st DCA 1992); Post-Newsweek Stations, Fla., Inc. v. Doe, 612 So. 2d 549 (Fla. 1992) (privacy interest in names of people associated with a criminal prostitution scheme was subordinate to public records law).

The surveillance videos—which Defendants appear to be most particularly interested in keeping from the public—are no different than other records and become public once turned over in discovery. Any purported privacy concerns do not, and cannot, prevent disclosure.

C. Other evidence, including search warrants, is not exempt from disclosure.

Defendants' Motion includes an all-encompassing request to ban any evidence related to their cases. But such evidence likely also includes warrant-related records, such as the warrants used to install the interior surveillance cameras. To the extent such warrant-related records or executed warrants have been filed with the Clerk, they constitute judicial records, and the public enjoys a common law right of access to them. See Wooten, 260 So. 3d at 1072 ("[P]ublic access to documents filed in support of search warrants is important to the public's understanding of the function and operation of the judicial process and the criminal justice system and may operate as a curb on prosecutorial or judicial misconduct.") (internal citation omitted). Consistent with this principle, Florida Rule of Judicial Administration 2.420(c)(6) provides that such records are exempt from public disclosure only "until execution of said warrants…." Thus, the Defendants cannot keep any search warrants related to the investigation away from the public eye.

Conclusion

In summary, the Defendants are not entitled to shield records from public scrutiny in this case of significant concern, for any of the reasons proffered in their Motion. The Motion accordingly should be denied.

WHEREFORE, the Media Intervenors respectfully request that their motion to intervene be granted, permitting intervention for the limited purpose of opposing Defendants' Joint Motion for a Protective Order and any future closure motions to the extent they seek to limit access to public and judicial records.

THOMAS & LOCICERO PL

/s/ Dana J. McElroy
Dana J. McElroy
Florida Bar No.: 0845906
dmcelroy@tlolawfirm.com
Daniela Abratt
Florida Bar No.: 0118053
dabratt@tlolawfirm.com
915 Middle River Drive, Ste. 309
Fort Lauderdale, FL 33304
(954) 703-3416 (phone)
(954) 400-5415 (fax)

-and-

Carol Jean LoCicero
Florida Bar No.: 603030
clocicero@tlolawfirm.com
Mark R. Caramanica
Florida Bar No.: 110581
mcaramanica@tlolawfirm.com
601 South Boulevard
Tampa, FL 33606
(813) 984-3060 (phone)
(813) 984-3070 (fax)

Attorneys for ABC, Inc; The Associated Press; ESPN, Inc.; Gannett Co., Inc.; GateHouse Media, LLC; The McClatchy Company; The New York Times Company; Orlando Sentinel Communications Company, LLC; Sun-Sentinel Company, LLC; and TEGNA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **26th** day of **March, 2019** a true and correct copy of the foregoing has been e-filed via the Florida Court's E-Filing Portal and served via the portal upon all parties and counsel of record.

/s/ Dana J. McElroy
Attorney